No. 85-1643

Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1985

STROH CONTAINER COMPANY,

*Petitioner,*

*v.*

DELPHI INDUSTRIES, INC.
and GEOCARIS AND COMPANY, INC.

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

## RESPONDENTS' BRIEF IN OPPOSITION

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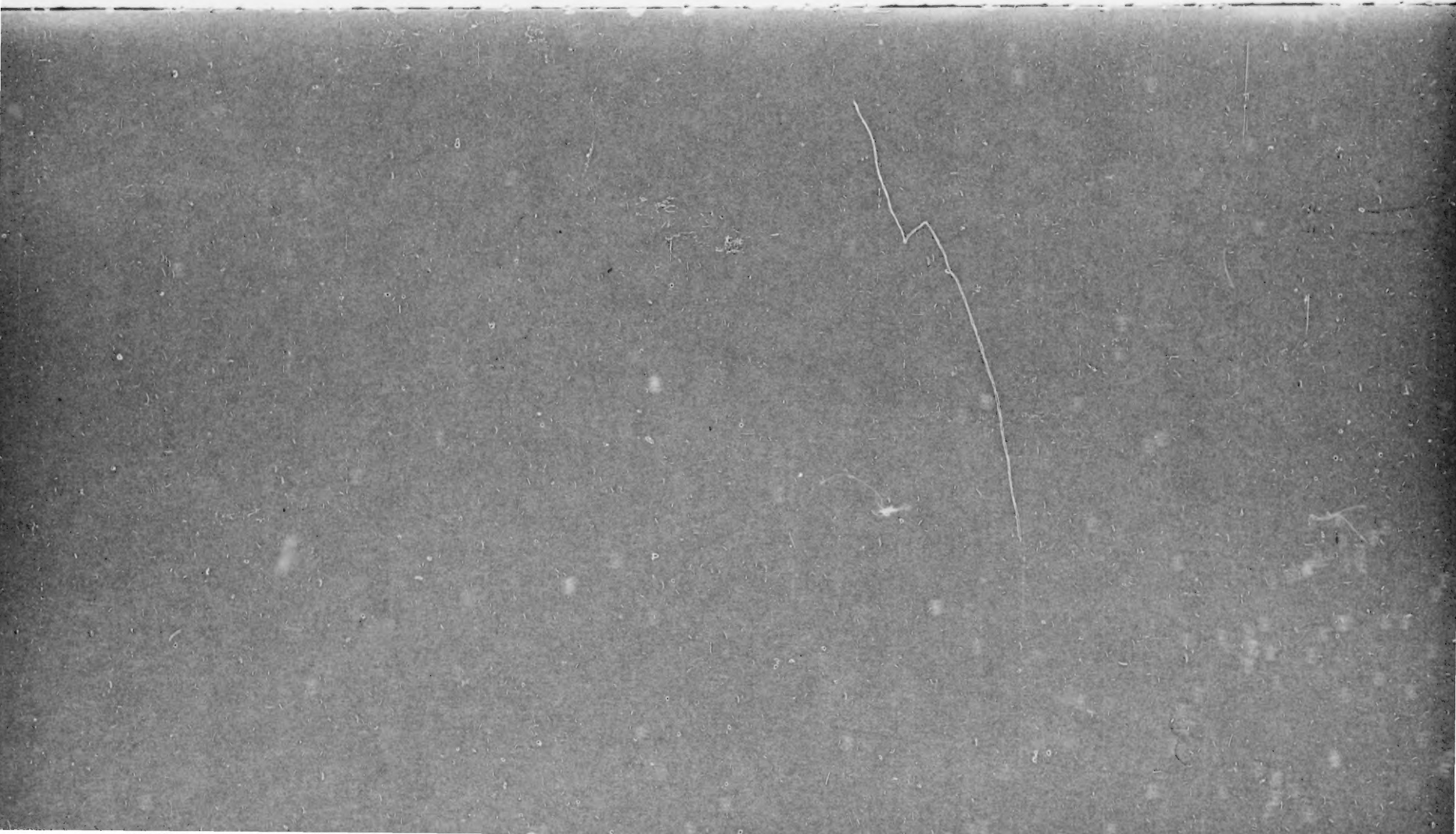

## QUESTIONS PRESENTED

Whether Section 10 of the Federal Arbitration Act, 9 U.S.C. § 10, authorizes judicial review of the merits of a commercial arbitration award entered after a full and fair hearing.

Whether Section 9 of the Federal Arbitration Act limits the subject matter jurisdiction of certain district courts, and if so, whether a Court is divested of its Section 9 jurisdiction simply because a transferred proceeding was originally filed elsewhere.

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## RESPONDENTS' BRIEF IN OPPOSITION

The Respondents, Delphi Industries, Inc. and Geocaris and Company Inc.,[1] respectfully request that this Court deny the petition for writ of certiorari, seeking review of the Eighth Circuit's opinion in this case.

[1] Pursuant to Rule 28.1, Respondents state that this Brief is filed on behalf of Delphi Industries, Inc. and its former subsidiary Geocaris and Company, Inc. Geocaris and Company, Inc. was merged into Delphi Industries, Inc. in January, 1984. Current subsidiaries of Delphi Industries, Inc. are Metropolitan Distributors, Inc., Tomsco Inc., Specialty Beverages, Inc., and Little Lady Foods, Inc.

## STATEMENT OF THE CASE

This case involves an action brought under the Federal Arbitration Act, 9 U.S.C. §§ 1-14 (the "Arbitration Act") to confirm a commercial arbitration award (the "Award") entered against Petitioner Stroh Container Company, formerly known as Jos. Schlitz Brewing Company ("Schlitz"), and in favor of Respondent Geocaris and Company, Inc. ("Geocaris"), which was formerly a regional distributor of Schlitz products. In the Award, a majority of a three-member arbitration panel found that Schlitz had breached its express and implied duties under its Franchise Agreement with Geocaris by failing to respond adequately to severe product quality problems which arose during the middle 1970's. The district court confirmed the Award and entered judgment for Geocaris, and a panel of the Eighth Circuit Court of Appeals unanimously affirmed.

The underlying facts are not in dispute.[2] From 1959 until September 8, 1981, Geocaris and Schlitz were parties to successive Wholesaler Franchise Agreements, the last of which was executed on March 29, 1973 (the "Franchise Agreement"). Commencing in 1974, Petitioner Schlitz began making various changes in the ingredients and brewing process for Schlitz brand beer, rendering it at various times over the period from 1974 through mid-1978 off-taste, flat, flaky, cloudy and lacking a proper head (A-31; A-39). The "grossly inferior quality" of the Schlitz brand beer caused a massive loss of market acceptance and was the "substantial factor" (A-31; A-39 to A-40) in causing disastrous and permanent reductions in market share and total sales of Schlitz beer by Respondent Geocaris and

[2] This factual statement is based on the opinion entered by the arbitration panel and material in the record below. Schlitz's factual statement is not so limited, going instead far beyond the record. Geocaris objects to any citation to facts or evidence not contained in the record below.

other distributors. Geocaris, the largest Schlitz distributor in the midwest, led a group of "experienced and dedicated" (A-31) Chicago-area distributors in complaining to Schlitz vociferously and repeatedly from late 1974 through mid-1978 regarding these product problems. Geocaris' goal in making these complaints was to bring to Schlitz's attention the fact that: (1) Schlitz's tampering with the Schlitz brand beer, and the serious quality problems that resulted, was causing an enormous marketing problem, and (2) that Schlitz must act quickly to bring the beer back to its prior quality level. However, these repeated and well founded complaints by Geocaris "fell on deaf ears" (A-34). Schlitz failed to respond adequately until very late in 1977 (A-2; A-31 to A-32). The quality problems were not finally repaired until mid-1978, but after years of bad product the "damaging effects of [Schlitz's] failure [to act] continued for some period thereafter" (A-35; A-40).

Based on these facts, and paragraph 9 of the Franchise Agreement which established arbitration as "THE SOLE REMEDY OF EITHER PARTY," Geocaris filed its Demand for Arbitration ("Demand") in February, 1982. The Demand alleged that Schlitz had breached its express and implied contractual duties as well as its product warranties. After numerous unsuccessful defensive maneuvers by Schlitz, an arbitration hearing commenced in Minneapolis, Minnesota on May 7, 1984 and, after a recess, concluded in Chicago on June 30, 1984. The hearing totaled eleven days, during which sixteen witnesses gave testimony and one hundred fifty exhibits consisting of thousands of pages were introduced. The parties submitted lengthy post-hearing briefs addressing all factual and legal issues. In neither the proceedings below nor its Petition for Certiorari has Schlitz claimed that the hearing or any other aspect of the arbitration proceedings were tainted by corruption, fraud, partiality, misconduct or any other procedural unfairness or irregularity.

On October 11, 1984, a majority of the panel issued its award in favor of Geocaris in the amount of $2,094,665.91 (A-30 to A-35). After the entire arbitration panel concluded that the Demand was arbitrable and that Schlitz's procedural arguments were without merit, the panel majority specifically found that by failing "to acknowledge and respond in a diligent and reasonable manner to the clear, vigorous and continuing complaints of deteriorating product quality. . ." (A-33) repeatedly raised by Geocaris, Schlitz had breached two separate duties under its Franchise Agreement with Geocaris: first, the covenant of good faith and fair dealing implied as a term of all contracts, and second, Schlitz's "qualitatively superior" (A-33) express duty, set forth in the Franchise Agreement, to conduct its relationship with Geocaris in a fair and equitable manner. As a result of these breaches, Geocaris' business sustained significant damages. The panel majority also found that although Schlitz had in fact also breached its express warranties and its implied warranty of merchantability by manufacturing and selling the poor quality Schlitz brand beer, disclaimers of warranty contained in the Franchise Agreement precluded any recovery by Geocaris on this basis. The panel majority therefore awarded no damages for bad product in and of itself. Schlitz's liability flowed, instead, from its failure to respond prudently and diligently to Geocaris' well founded complaints concerning the serious problems caused by the bad product's presence in the market.

One arbitrator dissented from the majority's Award. However, he agreed that the facts were in large part not disputed. In fact, the dissenting arbitrator stated that he "would adopt [Geocaris'] proposed findings virtually intact" (A-36). His disagreement stemmed solely from the application of the undisputed facts to the law as he viewed it. Like the majority, however, he found that the brewing changes had "deleterious effects upon the Schlitz brand product" (A-39), and that these defects reduced customer acceptance of the Schlitz brand, which in turn caused a portion of the sales decline (A-40). The

dissenter further agreed that Schlitz gave Geocaris and other dealers "repeated assurances that quality problems would be corrected. . ." (A-37), conduct which the majority characterized as " 'stonewalling' the issue for over two and one-half years" (A-32).

Upon Schlitz's refusal to satisfy the Award, Geocaris promptly filed an action in the United States District Court for the Northern District of Illinois to confirm the Award pursuant to Section 9 of the Arbitration Act. Geocaris invoked the jurisdiction of the district court under 28 U.S.C. § 1332, diversity of citizenship, since Geocaris is a citizen of Illinois and Schlitz is a citizen of Wisconsin and Michigan. After Geocaris served its Motion for Summary Judgment, Schlitz initiated its own action in a second forum, the United States District Court for the District of Minnesota. Schlitz asked that court to vacate or modify the award pursuant to Sections 10 and 11 of the Arbitration Act. Schlitz, like Geocaris, invoked the jurisdiction of the district court under 28 U.S.C. § 1332.

After Schlitz asserted jurisdictional objections to Geocaris' action to confirm the Award, the Illinois court, on Geocaris' motion, transferred that action to the district of Minnesota, pursuant to 28 U.S.C. § 1404(a). Thereafter, Geocaris' action to confirm and Schlitz's action to vacate were heard together.

The district court issued its Memorandum Order on December 31, 1984 (A-18 to A-29). The court confirmed the Award in every respect, holding that it had jurisdiction over Geocaris' action, that the requirements for confirmation of the award under Section 9 of the Arbitration Act were met, and that Schlitz's motion to vacate or modify the Award under Sections 10 and 11 should be denied. In particular, the court found that Schlitz had failed to demonstrate clearly that the Award was entered in manifest disregard of the law (A-25—A-26), and further held that '[i]nsofar as the award seeks to redress damages which Geocaris incurred as a result of what the arbitrators found to be Schlitz' breach of these contractual

provisions and duties, it cannot be said that the award fails to draw its essence from the parties' agreement" (A-27). In a second opinion, the district court denied Schlitz's request for fees but awarded post-Award, prejudgment interest.[3]

A unanimous panel of the Eighth Circuit Court of Appeals affirmed the district court's opinions in all respects (A-1—A-17). The panel assumed without deciding that the "manifest disregard" and "essence of the agreement" tests which Schlitz invoked were applicable, and concluded that "under any of them, the award must nonetheless be affirmed" (A-11).

## REASONS FOR DENYING THE WRIT

### I.

### CONSISTENT WITH SECTION 10 OF THE ARBITRATION ACT, THE COURTS BELOW PROPERLY REFUSED TO REVIEW THE MERITS OF THE AWARD.

#### A. This Court And Lower Courts Unanimously Recognize That The Parties' Contractual Choice Of Arbitration Requires Limited Review Of Arbitration Awards.

Schlitz asks this Court to review the substantive merits of the arbitrators' Award. In refusing to conduct such a review, the courts below acted consistently with the parties' contractual choice of arbitration, with the statutory scheme of the Arbitration Act and the decisions of other courts. In addition, the judicial glosses on the Act upon which Schlitz relies cannot authorize the substantive scrutiny Schlitz desires. Because the decision below contains no error and the lower courts are in no need of guidance, certiorari should not issue.

This Court has recognized that the fundamental purpose of the Arbitration Act is to guarantee judicial enforcement of private contractual agreements to arbitrate. *Mitsubishi Motors*

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[3] Schlitz does not seek review of any issues raised by the second district court opinion.

*Corp. v. Soler Chrysler-Plymouth Inc.*, 473 U.S. ____, 105 S. Ct. 3346, 3353, 87 L.Ed. 2d 444 (1985); *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. ____, 105 S. Ct. 1238, 1242, 84 L.Ed. 2d 158, 164 (1985). Private parties choose arbitration to avoid the risk of prolonged litigation, *Southland Corp. v. Keating*, 465 U.S. 1, 7 (1984), thereby trading "the procedures and opportunity for review of the courtroom for the simplicity, informality and expedition of arbitration." *Mitsubishi Motors*, 473 U.S. at ____, 105 S. Ct. at 3355, 87 L.Ed. 2d at 456. Achievement of the parties' purpose therefore "requires that substantive review at the award-enforcement stage remain minimal. . . ." *Id.* at ____, 105 S. Ct. at 3360, 87 L.Ed. 2d at 462. Lower courts also unanimously recognize that limited review is necessary to preserve the bargained-for purpose of arbitration. *Revere Copper & Brass, Inc. v. Overseas Private Investment Corp.* 628 F.2d 81, 83 n.1 (D.C. Cir.), *cert. denied*, 446 U.S. 983 (1980); *Saxis Steamship Co. v. Multifacs International Traders, Inc.*, 375 F.2d 577, 582 (2d Cir. 1967) (extensive judicial review frustrates the basic purpose of arbitration). These cases accord with this Court's observations over a century ago:

> If the award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error either in law or fact. A contrary course would be a substitution of the judgment of the Chancellor in place of the judges chosen by the parties, and would make an award the commencement, not the end, of litigation.

*Burchell v. Marsh*, 58 U.S. 344, 349 (1855). Therefore, courts unanimously refuse to review arbitration awards for errors of fact, law or contract interpretation.[4]

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[4] Courts have confirmed awards which were "clearly erroneous both in logic and result," *I/S Stavborg v. National Metal Converters, Inc.*, 500 F.2d 424, 429 (2d Cir. 1974), as well as awards which were

*(Footnote continued on next page.)*

This narrow scope of review is reinforced by the specific provisions of the Arbitration Act. The Court of Appeals here correctly noted that the express terms of Sections 10 and 11 of the Arbitration Act allow courts to vacate or modify an award only upon narrow procedural grounds (A-9—A-10). *Accord Amicizia Societa Navegazione v. Chilean Nitrate & Iodine Sales Corp.*, 274 F.2d 805, 808 (2d Cir.), *cert. denied*, 363 U.S. 843 (1960); *I/S Stavborg*, 500 F.2d at 429-30 (Section 10 exhausts the grounds upon which courts may disturb an arbitral award). Schlitz does not contest this holding or seek review of any specific question of statutory interpretation under the Arbitration Act. Instead, Schlitz asks this Court to examine the Eighth Circuit's application of two non-statutory standards sometimes used to examine arbitration awards. Since these two standards are being uniformly applied, and were correctly applied here, review should be denied.

### B. Since *No* Court Has Ever Vacated An Award Based On The "Manifest Disregard Of The Law" Standard, There Is No Conflict And No Basis For Review.

Schlitz first claims that the Court of Appeals misapplied the "manifest disregard of the law" standard. This standard, as the courts below recognized (A-10; A-24) derives from dictum

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*(Footnote continued from preceding page.)*

"difficult to comprehend." *Kane Gas Light & Heating Co. v. International Brotherhood of Firemen and Oilers Local 162*, 687 F.2d 673, 679 (3d Cir. 1982), *cert. denied*, 460 U.S. 1011 (1983); *see also Andros Compania Maritima v. Marc Rich & Co.*, 579 F.2d 691, 704 (2d Cir. 1978) (award will be confirmed when arbitrators provide "a barely colorable justification for the outcome reached"). Even the dissenting arbitrator recognized this fact: "[W]here a party to a binding arbitration agreement is dissatisfied with the result it will not be relieved from its contractual waiver of judicial review" (A-46).

found in *Wilko v. Swan*, 346 U.S. 427, 436 (1953).[5] The Court of Appeals further noted that the *Wilko* court distinguished misinterpretation of the law, which is not subject to judicial review, from "manifest disregard" which might be, and that *Wilko* requires that such disregard "be made clearly to appear." *Wilko*, 346 U.S. at 436; A-11. The Court proceeded to apply the test for "manifest disregard" enunciated by the Ninth Circuit in *San Martine Compania de Navegacion S.A. v. Saguenay Terminals, Ltd.*, 293 F.2d 796, 801 (9th Cir. 1981). Based on that test, the Court of Appeals found no manifest disregard.

Schlitz contrives two imaginary conflicts among the circuits regarding the "manifest disregard" test (Petition at 12). The first is whether courts may apply the standard at all. This alleged conflict cannot justify certiorari, since the Eighth Circuit resolved it *in Schlitz's favor.* The Court of Appeals assumed that the "manifest disregard" test could be used to vacate awards; it then applied the test, using Schlitz's authorities, and found Schlitz's argument still to be without merit.

Schlitz's second "conflict" concerns how the standard should be applied. Here, too, there is no conflict, and the opinion below creates none. Although Schlitz complains of the "hit-or-miss approach presently followed" (Petition at 14), the

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[5] *Wilko* was an action to compel arbitration and did not involve confirmation of an award under § 9 of the Arbitration Act. In reaching its conclusion that a pre-dispute agreement to arbitrate claims arising under § 12(2) of the Securities Act of 1933, 15 U.S.C. § 771(2) was unenforceable, the *Wilko* Court suggested that arbitrators' manifest disregard of the law might be subject to judicial review for error. This Court has not subsequently elaborated on the "manifest disregard" standard. Some recent appellate decisions have questioned its continuing validity. *MSP Collaborative Developers v. Fidelity & Deposit Co. of Md.*, 596 F.2d 243, 251 (7th Cir. 1979); *I/S Stavborg* 500 F.2d at 430-33 (2d Cir. 1974). However, that issue is not presented by this case.

"manifest disregard" standard is *never* a hit. The standard has never actually been used to vacate a commercial or labor arbitration award. Lower courts consistently recognize that "manifest disregard of the law," however defined, must be something substantially beyond and different from an arbitrator's mere misinterpretation of law, fact or contract. *Drayer v. Krasner,* 572 F.2d 348, 352 (2d Cir.), *cert. denied,* 436 U.S. 948 (1978); *National Railroad Passenger Corp. v. Chesapeake & Ohio Railway Co.,* 551 F.2d 136, 143 (7th Cir. 1977); *San Martine,* 293 F.2d at 801; *Amicizia Societa Navegazione,* 274 F.2d at 806.

Here, Schlitz can claim no more than that the panel majority applied the law differently than Schlitz wanted. The law which the panel majority applied was based upon Schlitz's express and implied duties to Geocaris under the Franchise Agreement. These legal principles are firmly rooted in our legal system and their application involves no manifest disregard of the law. Even if they were improperly applied, which Geocaris vigorously denies, the issue is not subject to judicial review.

**C. This Case Presents No Conflict Among The Circuits Regarding The "Essence of the Agreement" Standard.**

Schlitz next relies upon the putative requirement that the arbitrators' award "draw its essence" from the parties' agreement. Schlitz fails to demonstrate any division among the Courts of Appeals. As with the "manifest disregard" standard, the Eight Circuit assumed arguendo that this judicial gloss on the Arbitration Act was applicable, and correctly concluded that if so, the Award nonetheless met the standard.

Schlitz claims the opinion below "directly conflicts" (Petition at 15) with *Swift Industries, Inc. v. Botany Industries, Inc.,* 466 F.2d 1125 (3d Cir. 1972). There is no such conflict. *Swift Industries* interpreted this Court's discussion in *United Steelworkers v. Enterprise Wheel & Car Corp.,* 363 U.S. 593, 597

(1960), as holding that "(A) labor arbitrator's award does 'draw its essence from the collective bargaining agreement' if the interpretation can in any rational way be derived from the agreement, viewed in the light of its language, its context, and any other indicia of the parties' intention; . . . . " 466 F.2d at 1130 (quoting *Ludwig Honold Manufacturing Co. v. Fletcher,* 405 F.2d 1123, 1128 (3d Cir. 1969) ). The Court of Appeals here held that the Award passed a similar test: "Geocaris set forth several rational arguments both before the arbitrators and the courts, consistent with plausible interpretations of state law, justifying the award" (A-12).

Schlitz does not argue that the Award's interpretation can't be rationally derived from the Franchise Agreement.[6] Schiltz only claims that the arbitration panel failed to adopt "[t]he only reasonable construction of the Franchise Agreement" (Petition at 17), i.e. Schlitz's construction. Not only is this not the *Swift Industries* test, it is completely irrelevant. This Court and the lower courts reject such self-serving contentions and hold that even where "the arbitrators misconstrued a contract [it] is not open to judicial review." *Bernhardt v. Polygraphic Co.,* 350 U.S. 198, 203 n.4 (1956). As Justice Douglas noted in *United Steelworkers of America v. Enterprise Wheel & Car Corp.,* 363 U.S. 593 (1960), "the courts have no business overruling him [the arbitrator] because their interpretation of

[6] To show a failure of the "essence" test; Schlitz quotes the warranty disclaimer in Schedule C of the Franchise Agreement. Schlitz thus ignores the explicit provision in Schedule B obliging Schlitz to "[c]onduct all Buyer-Seller relationships in a fair and equitable manner." Interpretation of these two provisions, like all matters of contract interpretation, fell within the exclusive jurisdiction of the arbitrators.

the contract is different from his."[7] *Id.* at 599. Schlitz can show neither a conflict regarding the meaning of the "essence of the agreement" test nor any error in the Court of Appeals' application of the test.

## II.

## PETITIONER'S JURISDICTIONAL ARGUMENT IS UNWORTHY OF REVIEW.

Schlitz contends that by interpreting Section 9 of the Arbitration Act as a special venue provision (A-5—A-6, n.7) the decision below conflicted with other decisions. Schlitz misreads its own authority in an effort to create this conflict. In any event, Schlitz was absolutely unprejudiced by any alleged error since this case was heard and decided by a district court which exercised unquestioned jurisdiction.

### A. There Is No Division Among The Circuits.

Section 9 of the Arbitration Act governs the procedures used to secure judicial confirmation of arbitration awards and provides, inter alia, that "[i]f no court is specified in the

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[7] Schlitz also claims to see a conflict between *Swift Industries* and the decision below regarding the relative deference courts accord labor and commercial awards. Schlitz *infers* the conflict, since the opinion below nowhere purports to disregard or disagree with *Swift Industries* or to opine in any way upon the difference between labor and commercial arbitration. Had the court reached this issue, it would have been well advised to reject the Third Circuit's position. *Swift Industries* quoted dictum from *Ludwig Honold Mfg. Co.*, 405 F.2d at 1128. *Ludwig Honold* in turn rested on Justice Douglas' aside in *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578 (1960), regarding "the hostility evinced by courts toward arbitration of commercial agreements . . . ." However, that hostility was eradicated by passage of the Arbitration Act. *See Mitsubishi Motors Corp.*, 473 U.S. ____, 105 S. Ct. 3346, 3354 n.14, 87 L.Ed. 2d 444, 454, n.14 (1985). Therefore, that putative "hostility" cannot justify more probing judicial scrutiny under the Arbitration Act of commercial arbitration awards than of labor awards.

agreement of the parties [to arbitrate], then such application [for an order confirming the award] may be made to the United States court in and for the district within which such award was made," 9 U.S.C. § 9. Schlitz reads this provision to limit subject matter jurisdiction. However, it is settled that the Arbitration Act "does not create any independent federal-question jurisdiction, . . ." *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 25 n.32 (1983). Some independent basis for jurisdiction, in this case diversity of citizenship, must be present. *Id.* Given this premise, Schlitz's position reduces to a claim that Section 9 divests courts of diversity jurisdiction they would otherwise exercise.

The courts below wisely refused to adopt this position, instead construing Section 9 as a special venue provision (A-5 to A-6; n.7). This position conflicts with none of Schlitz's cases, since none squarely holds that Section 9 limits subject matter jurisdiction.[8] Schlitz finds "direct conflict" between the decision below and *City of Naples v. Prepakt Concrete Co.*, 490 F.2d 182 (5th Cir.), *cert. denied*, 419 U.S. 843 (1974). *City of Naples* held only that the court for the district in which the award was entered was "the *proper* court to confirm, vacate, modify, or correct the arbitration award." *Id.* at 184 (emphasis supplied). The opinion does *not* hold that Section 9 governs jurisdiction rather than venue. Hence, *City of Naples* does not conflict with the opinion below.

Nor do Schlitz's other authorities create any conflict. *United States ex rel. Chicago Bridge & Iron Co. v. Ets-Hokin*, 397 F.2d 935, 938-39 (9th Cir. 1968), did not even involve Section 9 of the Arbitration Act. The decision interprets Section 10. *Commonwealth Edison v. Gulf Oil Corp.*, 541 F.2d 1263, 1272 n.16 (7th Cir. 1976), an action to compel arbitration, contains neither a holding regarding the proper interpretation

[8] The Second Circuit has also construed § 9 as a venue provision. *Smiga v. Dean Witter Reynolds, Inc.*, 766 F.2d 698, 706 (2d Cir. 1985).

of Section 9, nor any language suggesting the section governs jurisdiction rather than venue. *Island Creek Coal Sales Co. v. City of Gainesville,* 729 F.2d 1046, 1049-50 (6th Cir. 1984), like *City of Naples,* held only that Section 9 fixed "the proper court" for a confirmation award, without elaborating on how this implicated jurisdiction rather than venue. Thus, none of these cases supports Schlitz's claim of a split in the circuits on the proper construction of Section 9.

**B. Even If The Law Were As Schlitz Contends, No Prejudice Can Be Shown.**

Schlitz's continued assertion of its jurisdictional objection is completely frivolous. Schlitz could not possibly have been prejudiced in any way by the alleged jurisdictional "defect," as both courts below specifically recognized.

After entry of the Award, each party filed a complaint. Geocaris asked the United States District Court for the Northern District of Illinois to confirm the award. Schlitz sought to have the award vacated by the United States District Court for Minnesota. The Illinois case was transferred to Minnesota, where the two cases were heard and decided together. The district court opinion issued from the very same court which Schlitz claims was the *only* proper court to hear the case. Nonetheless, Schlitz contests that court's jurisdiction over Geocaris' action. Schlitz's unarticulated premise—that because the transferor court in Illinois lacked jurisdiction, the transferee court in Minnesota inherited the jurisdictional defects—is without case support, and is directly contradicted by 28 U.S.C. § 1631, which permits transfers to cure a want of jurisdiction.[9] Thus, even if Section 9 governs jurisdiction, the transfer was effective.

In any event, Geocaris' action was heard and decided jointly with Schlitz's Minnesota action, which suffered no jurisdictional defects and which raised exactly the same issues.

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[9] The Eighth Circuit noted the pertinence of 28 U.S.C. § 1631, but Schlitz's Petition ignores that provision.

Thus, even had Geocaris' action been dismissed, the district court's opinion, and its practical impact upon the parties, would have been unchanged. Schlitz's action to vacate or modify would still have been denied and the Award would stand.

The opinions below recognized the frivolous character of Schlitz's jurisdictional challenge. The district court noted that Schlitz was "inviting the court and 'the parties to engage in an additional circuitous procedure to satisfy a jurisdictional technicality' . . . ." (A-22) The Court of Appeals observed that "Schlitz would have occupied the same position with respect to its liability for the award regardless of the route taken. . . ." (A-6, n.7) Schlitz's petition does not contest these conclusions. Its jurisdictional argument is thus a purely technical exercise with no practical significance. Geocaris submits that this Court need not review jurisdictional objections which make no practical difference.

This case presents a mundane commercial dispute simply involving Schlitz's claims that it disagrees with the statutory and contract interpretations made by the arbitration panel and the courts below. These claims do not merit this Court's consideration.

## CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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